

# EXHIBIT J

Keller | Postman



**BY EMAIL**

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May 11, 2023

**Re: *In re Google Digital Advertising Antitrust Litig.*, No. 1:21-md-03010  
(S.D.N.Y.) (PKC); Documents Produced in MDL**

Rob,

I wanted to follow-up on an issue that has come up in previous conversations related to Google's production of pre-suit investigation documents to the states that it reproduced to the private plaintiffs in this MDL. As part of the pre-suit investigations Google produced over 2 million documents (2,284,817) to the State Plaintiffs.

The Court's November 5, 2021 Order (Dkt. 168) restated that Google needed to produce to all private plaintiffs in the MDL the documents it previously produced to the State Plaintiffs in the State Plaintiffs' digital advertising investigation. Accordingly, Google produced roughly 2.3 million documents to the private plaintiffs in the MDL in 2021.

Please recall that initially, Google produced only approximately 884,765 to the private MDL private plaintiffs as related to the DOJ's ad-tech investigation. A January 27, 2022 email from Stuart Davidson, counsel for the Direct Action Newspaper Plaintiffs, requested that Google clarify the discrepancy between the 884,765 documents produced and the 2 million referred to by Google in court and reflected in the Court's Order. In a letter response Counsel for Google stated:

The reason for the purported "discrepancy" noted in your email is that not all of the approximately 2 million documents referenced at the September hearing were produced to the State Plaintiffs "in their digital advertising investigations." That figure includes documents made available to Texas and other states who were, at the time, pursuing a multi-pronged investigation into "online advertising, online search, and mobile operating systems" and coordinating with DOJ's own multifaceted investigation. Google understands

May 11, 2023

Page 2

the spirit of the Court's Orders to be to put the Private Plaintiffs on equal footing with the State Plaintiffs with respect to the subject matter of this case, i.e., digital advertising technology. Google therefore reviewed the DOJ production to identify and produce documents that concern (or potentially concern) ad tech.

(January 31, 2022 Letter from Justina Sessions, Dkt. 239-1.) The Private Plaintiffs had to obtain an order from the Court for Google to provide the remaining documents.

As the substantial completion deadline approaches, Google has repeatedly touted that 2.3 million documents were already produced here. This assertion appears, at best, overstated given your clarification that the majority of the 2.3 million documents produced in this MDL actually relate to the States' and DOJ's investigation of online search and mobile operating systems, as Ms. Sessions stated, as opposed to the ad tech issues in these filed MDL cases.

As you are aware, there were concurrent state investigations and Google produced documents in response to CIDs related to both the Google Search investigation and the Google Ad Tech investigation.

While all the documents produced in response to the Texas CID are ad tech related, Google comingled its documents responsive to requests in the States' and DOJ's Search and Mobile Operating System with documents responsive to the States' and DOJ's Ad Tech investigation in response to a Nebraska CID that requested documents produced to the U.S. Department of Justice. Unfortunately, when producing the two million-plus documents to the states, Google did not identify which documents produced to the DOJ were responsive to the Google Ad Tech CIDs and which were responsive to other subjects at issue in DOJ's CID.

Our analysis has confirmed Ms. Sessions' representations that no more than about 1/3 of the 2.3 million documents at issue are in fact related to the Ad Tech investigation. Nevertheless, Google continues to refer to its "substantial production" in this MDL of the two million-plus documents it has produced. To ensure consistency and candor with the Court, it is imperative that we are all referring to this corpus of documents accurately in conversations with the State Plaintiffs, private MDL plaintiffs, and the Court.

Since Google is most familiar with the search terms used to collect documents responsive to the DOJ investigation, it is in the best position to provide accurate numbers that reflect the actual amount of relevant material produced. Please confirm that, as Justina Sessions stated in her January 31, 2022 letter to Mr. Davidson, only 884,765 of the 2.3 million documents Google produced in this MDL are responsive to the State Plaintiffs' ad tech CIDs. Your response will enable the parties and the Court to engage in informed discussions.

May 11, 2023

Page 3

Please confirm the above before our May 18, 2023 in-person meet and confer to help ensure all parties are on the same page.

Regards,

Plaintiffs' Discovery Committee  
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